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II. REMARKS

A. Introduction

In the December 10, 2004 Office Action, claims 12-17 and 23-28 are noted as pending and are rejected. In this Response, claims 12, 23, 26 and 28 are amended, and Remarks are provided.

B. Rejections Under 35 U.S.C. § 132 and 35 U.S.C. § 112, First Paragraph

Claims 12 and 28 and the specification are both rejected, even though it was requested to amend only these claims in the last Response by adding: "heat exchange is prohibited...two extraction fans is stopped." See numbered paragraphs 3 and 5 of the Action. However, since only the claims were the subject of the requested amendment, and not the written description, at a minimum it is not believed a rejection under 35 U.S.C. § 132 of the specification is applicable. See MPEP §§ 608.04, and 706.03(o).

As for an allegation of "new matter" in claims, it is believed such a rejection lies only under 35 U.S.C. § 112, first paragraph, such as raised in numbered paragraphs 7 ("written description") and 8 ("enablement") of the Action, not under 35 U.S.C. § 132. MPEP § 706.03 (o), Examiner's note 3 ("If new matter is added only to a claim..."). See also In re Rasmussen, 650 F.2d 1212, 1214-1215, 211 USPQ 323 (CCPA 1981).

Nevertheless, in response to the rejection of claims 12-17 and 28 under 35 U.S.C. § 112, first paragraph, the rejected recitation "*and heat exchange is prohibited*" has been changed to "*there is an exchange of air without recuperation of heat*". This recitation is expressly supported on page 10, lines 17-19 and 25-29. See also, more generally, page 9, line 9 to page 10, line 29 and Figures 8-11 described therein.

Such a mode of operation "without recuperation of heat" is used, e.g., in the summertime, when the outside air temperature during the night is lower than during the day. In such a case, the invention recited by these claims introduces outside air into the unit, and thus inside the room, without recuperation of heat, which causes a general cooling of the room. The stale air, which is warmer, is evacuated by the unit to outside the building, without transferring its heat. Such a mode of operation is somewhat similar to opening a window of the room during the night.

By contrast, during the day, the room is at a lower temperature than the outside or fresh air. At this time, the unit operates in a mode "with recuperation of heat." That is, the stale air

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from the room is heated by the fresh air from the outside. This fresh air, which transfers its heat to the stale air, is thus cooled and enters the room at a lower temperature than the outside air from where it came. The room is thus cooled relative to the outside heat, during the day.

Based on the above discussion, and the further claim amendments, it is respectfully submitted that the claims are fully in compliance with 35 U.S.C. §§ 132 and 112,

C. Rejection Under 35 U.S.C. § 101

As described above, the specification explains the recited mode of operation "without recuperation of heat". See, particularly, the passage on page 9, lines 24-26 wherein it is stated "...such as to result in a low amount of heat exchange between the rising stream of fresh air ANS and the descending stream of stale air AVS present in the upper part".

In this respect, the Applicant respectfully disagrees with the Examiner's conclusion that the invention is inoperative in regards to operating without recuperation of heat, since it is possible to have no exchange of heat, as described above.

If the fan 46 is stopped (Figures 8 and 9), the fresh air introduced by the fan 38 (Figure 9) goes where the circuit is less resistant, i.e., downwards. For instance, the fresh air can go downwards at a flow rate of 50 m³/h and upwards at a flow rate of 5 m³/h. It should be noted that upwards, the stream of stale air deforms and reduces the fluid passage 34. As a result, most of the fresh air flows downwards. Moreover, the section of the fluid passage 36 for the stale air is increased in size by deformation and may thus have a greater flow rate.

Under such circumstances, there is an exchange of heat in the upper portion of the unit, but the flow rates are not equal (in the example 5 m³/h of fresh air against 50 m³/h of stale air). Consequently, the heat exchange quantity is minimal, and the unit operates as if there is no recuperation of heat, as discussed above.

D. Rejection of Claims 12-17 and 23-28
Under 35 U.S.C. § 112, Second Para.

As noted above, claims 12 and 28 have been amended to clarify the absence of recuperation of heat, and claims 12-17 and 28 are believed to fully comply with 35 U.S.C. § 112, Second Paragraph.

Claims 23-28 have also been amended, where necessary, to improve their clarity and also are believed to satisfy this provision.

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E. Rejection of Claims 12-17 and
23-28 Under 35 U.S.C. § 102(b)

The reference to Section "103" in numbered paragraph 13 on page 7 of the Action is assumed to be a reference to Section 102, as numbered paragraph 14 includes a rejection under 102. With this understanding, it is respectfully submitted that the present invention, as recited by the amended claims, was neither anticipated nor rendered obvious by the cited reference.

Oberschmid's heat exchanger operates with flows in the same direction and is not based on a counter-current in fluid passages. Fluid passage 3 experiences increased pressure and fluid passage 4 experiences reduced pressure. Therefore, strings 5 are necessary for maintaining geometry of these fluid passages. Moreover, ropes 31 (see Fig. 4c) are used to adjust geometry of the fluid passages in order to change the output of heat recuperation. In order to operate, without recuperation of heat, it would be necessary to open valves 13 to directly extract the stale air toward the outside.

Oberschmid's thus described structure and function of Oberschmid is not analogous or relevant to the instant invention in which the channels (fluid passages) experience increased pressure. There is no need to use strings or the like to maintain a geometry of the fluid passages. In order to have no recuperation of heat with the present invention, it is only necessary to stop one of the two extraction fans. In such a case, the stoppage of a fan causes deformation of the fluid passages and allows a mode of operation without recuperation of heat, a feature neither taught nor disclosed by the cited reference.

III. CONCLUSION

In light of the above amendments and remarks, it is respectfully submitted that claims 12-17 and 23-28 are in condition for allowance.

If there are any additional fees associated with this Response, please charge same to our Deposit Account No. 19-3935.

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Finally, if there are any formal matters remaining after this Response, the undersigned would appreciate a telephone conference with the Examiner to attend to these matters.

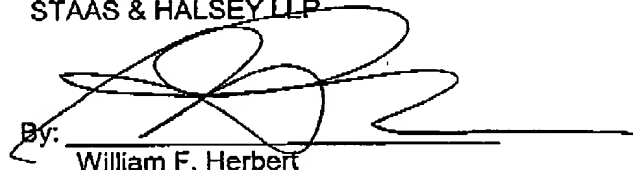
Respectfully submitted,

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3/10/05

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